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SENATE

REPORT
No. 98-241

COMPREHENSIVE CRIME CONTROL ACT OF 1983

SEPTEMBER 20, 1983.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany S. 1762]

The Committee on Foreign Relations, to which was referred sequentially from the Committee on the Judiciary the bill, S. 1762, for the purpose only of considering Part M of Title X, the "political offense" and related provisions, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE

The purpose of Part M, Title X, of S. 1762, is to modernize federal practices and procedures with respect to international extradition. The amendments to S. 1762 proposed by the Committee on Foreign Relations are technical in nature and intended to ensure that the bill conforms to the Committee's intent when on May 19, 1982, it approved amendments to S. 1940, "The Extradition Act of 1981."

As reported first by the Committee on the Judiciary and now by the Committee on Foreign Relations, S. 1762 retains limited court jurisdiction with respect to application of the "political offense exception" in international extradition proceedings and provides specific guidance to the courts in making such findings. It also provides the Secretary of State with sole authority to inquire into the motivation of the foreign state in requesting extradition and to determine whether extradition would be incompatible with humanitarian considerations. In making either of the above determinations, the Secretary would be required to consult with the appropriate Bureaus and Offices of the Department of State, including the Bureau of Human Rights and Humanitarian Affairs.

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BACKGROUND

The most recent effort to modernize federal practices and procedures with respect to international extradition began as an amendment to S. 1722—the pending federal criminal code bill in the 96th Congress (see Printed Amendment No. 2373 to S. 1722, 126 Cong. Rec. S13233–S13243 (September 23, 1980, daily ed.)). In the 97th Congress, the extradition provisions were included in the criminal code bill (see S. 1630, subchapter B of chapter 32; S. Rept. No. 97–307, 97th Congress, 1st session (1981). Separate legislation, S. 1639, dealing with extradition was also introduced by Senator Thurmond on September 18, 1981.

Following hearings on S. 1639, Senator Thurmond introduced a clean bill—S. 1940. The Committee on the Judiciary reported S. 1940, with amendments, on April 15, 1982 (S. Rept. No. 97–331, 97th Congress, 2d session (1982)). S. 1940 was then referred to the Committee on Foreign Relations for consideration of the "'political offense exception" to extradition and related provisions.[1] The Committee on Foreign Relations reported the bill to the Senate, with amendments, on May 19, 1982 (S. Rept. No. 97–475, 97th Congress, 2d session (1982)). Subsequently, S. 1940 passed the Senate on August 19, 1982 (128 Cong. Rec. S10880–S10884 (daily ed.)).

A companion bill differing in significant respects with the Senate measure (H.R. 6046) was reported by the House Committee on the Judiciary (H. Rept. No. 97–627, Part II, 97th Congress, 2d session (1982)); but no further action was taken by the House.

In the 98th Congress, the provisions of S. 1940 were incorporated into "The Comprehensive Crime Control Act of 1983," S. 829 and then, as amended by the Judiciary Committee and introduced anew, S. 1762. It was also incorporated into a separate extradition bill, S. 220. S. 1762 was reported, with amendments, by the Committee on the Judiciary on August 4, 1983. It was then referred sequentially to the Committee on Foreign Relations until September 20, 1983, for consideration of Part

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[1] On February 3, 1983, Senator Percy wrote to Senator Thurmond and requested that S. 1940 be referred sequentially to the Committee on Foreign Relations for a reasonable period of time. The request for sequential referral was based in large part on the Committee's interest in those aspects of S. 1940 concerning the "political offense exception"—a standard provision in U.S. bilateral extradition treaties. The request for sequential referral was also prompted by the longstanding interest of the Committee in matters concerning international extradition stemming from the Committee's primary jurisdiction over all treaties, including those relating to extradition. For example, during the first session of the 97th Congress, the Committee on Foreign Relations considered and favorably reported two extradition treaties: a U.S.-Colombian agreement and a U.S.-Netherlands agreement. Six extradition treaties were approved by the Committee during the 96th Congress.

On April 15, 1982, the Committee on the Judiciary reported S. 1940 with Committee amendments. Specifically of interest to the Committee on Foreign Relations, the Judiciary Committee amended section 3196(a) of S. 1940 to provide that the Secretary of State's authority to determine application of the political offense exception would be subject to judicial review and be upheld by the reviewing court if it is supported by substantial evidence.

S. 1940, as reported by the Committee on the Judiciary, was referred to the Committee on Foreign Relations on April 19.

Following referral, majority and minority staff of the Committee jointly reviewed the record from the three days of hearings held in the House and Senate on revision in the extradition law. Staff also consulted with and reviewed the comments of representatives of the Department of Justice and State, the staffs of the House and Senate Judiciary Committees, a panel of experts assembled by the American Society of International Law, representatives from the American Civil Liberties Union,, practicing attorneys, and scholars concerning S. 1940 and the political offense exception.

At its business meeting on May 19, 1982, the Committee met to consider its proposed amendments of S. 1940, as reported by the Committee on the Judiciary on April 15, 1982. The proposed amendments concerned the political offense exception and related provisions as set forth in S. 1940. Following discussion of S. 1940, the Committee by voice vote with a quorum present unanimously approved the proposed amendments described in this Report.

M, Title X, as it concerns the "political offense" exception and related provisions. On September 20, the Committee on Foreign Relations reported favorably S. 1762 with amendments to the Senate.

Committee Action

S. 1762, as reported by the Committee on the Judiciary, was referred to the Committee on Foreign Relations on August 4, 1983.

Following referral, Committee staff reviewed the bill and proposed five technical amendments to ensure that it conformed to the Committee's intent when it had considered and reported S. 1940 with amendments on May 19, 1982.

At its business meeting on September 20, 1983, the Committee met to consider its proposed amendments to S. 1762, as reported by the Committee on the Judiciary on August 4. Following discussion of S. 1762, the Committee by voice vote with a quorum present unanimously approved the proposed amendments described in the Report.

Committee Comments

S. 1762, as amended by the Committee on Foreign Relations accurately reflects the position of the Committee on the subject of international extradition as previously expressed in S. 1940 and as passed by the Senate last Congress.

In its Report on S. 1940, the Committee on Foreign Relations made the following comments which are equally applicable to S. 1762 as reported by the Committee to the Senate.

> The political offense exception is a standard provision in U.S. extradition treaties and in its usual form provides that there shall be no extradition for crimes of a political nature. Political offenses are generally divided into two classes—"pure" political offenses and "relative" political offenses. Pure political offenses include treason, sedition, and espionage: crimes of political dissent that can only be committed against the state. Relative political offenses involve common crimes that are linked to political motivation or circumstances. Under one commonly-used standard, extradition for such offenses has been barred when the state from which extradition is sought determines that the political content of the act outweighs the harm that may have been done in committing the offense. This attitude, according to a leading expert, resulted from the "growth and evolution of political institutions towards the liberal state (which) together with the rise of individualism sparked the concern for the political offender, especially where he had escaped from a nation with more 'benighted' views of government." [2]

Another expert has characterized the exception in the following terms:

> The political offense exception is the embodiment of the notion that political dissenters or rebels ought not be turned

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[2] Epps, Valerie. "The Validity of the Political Offender Exception in Anglo-American Jurisprudence." *Harvard International Law Journal*, Winter 1979, pp. 69–88.

over for trial and punishment to the very government which they have opposed. This concept is now well accepted in customary international law . . . it is in keeping with the very purpose of the political offense exception that its definition be a flexible one, which may encompass and protect a broad range of legitimate political dissent. A broad definition need not be a mechanistic or all-inclusive one. The word "political" may have different meanings in different contexts, and the United States is under no legal or moral obligation to shelter a fugitive from extradition simply because he claims a political motive for his crime. (Professor Steven Lubet testifying before the House Committee on the Judiciary, Subcommittee on Crime, February 3, 1982).[3]

While the assertion of a "pure" political offense is seldom at issue in extradition proceedings, claims of "relative" political offenses have been litigated in a number of extradition cases and have generated considerable academic debate about its present day utility. During the past decade, particular concern has been raised over the use of the exception to bar extradition for acts of international terrorism which ostensibly are associated with political activity or protest. For example, in two recent cases, by convincing the courts to invoke the political offense exception, members of the Provisional Irish Republican Army (PIRA) successfully resisted extradition to the United Kingdom for violent crimes that they were alleged to have committed against a British soldier and government property.[4] However, in another case involving a PLO member, Zyad Abu Eain, who was sought by the Israeli government for his participation in a bombing randomly directed at civilians in a marketplace in the country, the court refused to apply the political offense exception.[5] Subsequently, Abu Eain was extradited to Israel to stand trial.

The PIRA cases and the case of Abu Eain have raised serious questions about the ability of the courts to interpret consistently the political offense exception. Both the Carter and Reagan Administrations have argued that because of loose and inconsistent application of the exception, the United States may be viewed by international terrorists as a potential safehaven where their crimes may go unpunished if presented in the guise of justifiable political actions. Consequently, both Administrations have urged successively that clear guidelines be established to guide the determination of political offense exceptions.

It has also been suggested, as reflected in the version of S. 1940 reported by the Judiciary Committee that the courts are ill-equipped to decide issues that turn so heavily on questions of U.S. foreign policy and that, consequently, the Secretary

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[3] Professor Steven Lubet testifying before the House Committee on the Judiciary, Subcommittee on Crime, February 3, 1982.

[4] United States v. Mackin—80 C.R. Misc. 1 (S.N. N.Y. 1981) *Gov't Appeal Dismissed with Opinion, Sub Nom.*—F2d—1981.

[5] Zyad Abu Eain v Wilkes, 641 F.2d 504 (7th Cir. 1981).

of State should be vested with the sole authority to determine the application of the exception subject to limited judicial review. (S. Report No. 97–475, pp. 3–4.)

Proposed Amendments

(1) On page 340, line 11, after the word "of", strike out the word "rape" and insert in lieu thereof "forcible sexual assault"

(2) On page 344, line 12, after the word "Secretary", strike out the words "is persuaded" and insert in lieu thereof "determines"

(3) On page 344, line 24, after the word "is", insert the words "final and is"

(4) On page 344, line 25, after the word "review." strike out the word "Provided,"

(5) On page 345, line 1, strike out the words "however, That in" and substitute in lieu thereof "In".

Section-by-Section Analysis of Proposed Amendments of the Committee on Foreign Relations

A detailed section-by-section analysis of the Committee's views on §3194–§3196 as they relate to the "political offense exception" and related provisions is contained in the Committee Report on S. 1940 (S. Rep. 97–475, 97th, 2nd Session pp. 6–10). In addition, the views of the Department of State in support of the Committee's amendments is appended to this Report.

The technical changes proposed by the Committee are contained in § 3194 and § 3196. The first change is contained in § 3194(e)(1)(F) which, as reported by the Committee on the Judiciary, provides that an offense that consists of "rape" can never be considered a political offense. This provision was not contained in S. 1940 as reported by the Foreign Relations Committee but was an amendment to S. 1940 when it was considered and passed by the Senate. The Committee on Foreign Relations approved of this addition to the list of offenses that cannot be considered political offenses since the Committee cannot contemplate any circumstances under which rape could be justified for political purposes. However, rape has a specific connotation that may not include other sexual offenses that likewise cannot be justified for political purposes. As a result, the Committee recommends that the class of offenses be expanded from "rape" to "forcible sexual assault."

The second change is contained in § 3196(a)(3) and substitutes the word "determines" for the words "is persuaded." It is the Committee's belief that when the Secretary of State reviews requests that extradition not be carried out he makes an active determination based upon specific evidence and other relevant materials submitted to him. He is not merely "persuaded" that extradition should or should not be permitted. The proposed change also reflects the Committee's belief that the Secretary's review, which is not subject to court review, should be a careful and judicious deliberation.

The third change, contained in § 3196(a)(3) underscores the Committee's intention that the Secretary's determinations with respect to the surrender of a person resisting extradition are to be final and are not to be subject to court review.

The fourth and fifth changes, also contained in § 3196(a) strike the words "*Provided, however,* That in" and substitute "In" to make it clear that the Secretary is required to consult with the appropriate Bureaus and Offices of the State Department in making determinations with respect to the motivation of a foreign state in requesting extradition and to determine whether the extradition of the person in question would be incompatible with humanitarian consideration.

Cost Estimate

In accordance with Rule XXVI, paragraph 11(a) of the Standing Rules of the Senate, the Committee provides the following estimate of the cost of S. 1762 prepared by the Congressional Budget Office:

U.S. Congress,
Congressional Budget Office,
Washington, D.C., September 21, 1983.

Hon. Chairman H. Percy,
Chairman, Committee on Foreign Relations, U.S. Senate, Dirksen Senate Office Building, Washington, D.C.

Dear Mr. Chairman: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed the proposed amendments to Title X, Part M of S. 1762, the Comprehensive Crime Control Act, ordered reported by the Senate Committee on Foreign Relations, September 19, 1983.

Enactment of these amendments would not affect the budgets of the federal, state or local governments, because they do not change the substance of the bill. The estimated cost of the entire bill, as reported by the Senate Committee on the Judiciary, is discussed in the CBO cost estimate transmitted to that committee on September 7, 1983.

Should the Committee so desire, we would be pleased to provide further details on this estimate.

Sincerely,

Rudolph G. Penner, *Director.*

Evaluation of Regulatory Impact

In accordance with rule XXVI, paragraph 11(b) of the Standing Rules of the Senate, the Committee has concluded that there is no regulatory impact from S. 1762.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by Part M, Title X, of S. 1762 as reported, are shown as follows (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

UNITED STATES CODE

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TITLE 18—CRIMES AND CRIMINAL PROCEDURE

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[CHAPTER 209—EXTRADITION

[CHAPTER 209—INTERSTATE RENDITION

[Sec.
[3181. Scope and limitation of chapter.
[3182. Fugitives from State or Territory to State, District or Territory.
[3183. Fugitives from State, Territory or Possession into extraterritorial jurisdiction of United States.
[3184. Fugitives from foreign country to United States.
[3185. Fugitives from country under control of United States into the United States.
[3186. Secretary of State to surrender fugitive.
[3187. Provisional arrest and detention within extraterritorial jurisdiction.
[3188. Time of commitment pending extradition.
[3189. Place and character of hearing.
[3190. Evidence on hearing.
[3191. Witnesses for indigent fugitives.
[3192. Protection of accused.
[3193. Receiving agent's authority over offenders.
[3194. Transportation of fugitive by receiving agent.
[3195. Payment of fees and costs.]

Sec.
3181. Fugitives from State or Territory to State, District, or Territory.
3182. Fugitives from State, Territory or Possession into extraterritorial jurisdiction of the United States.
3183. Payment of fees and costs.

[§ 3181. Scope and limitation of chapter

[The provisions of this chapter relating to the surrender of persons who have committed crimes in foreign countries shall continue in force only during the existence of any treaty of extradition with such foreign government.]

[§ 3182.] § *3181.* Fugitives from State or Territory to State, District or Territory

Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

[§ 3183.] § *3182.* Fugitives from State, Territory, or Possession into extraterritorial jurisdiction of United States

Whenever the executive authority of any State, Territory, District, or possession of the United States [or the Panama Canal Zone], de-

mands any American citizen or national as a fugitive from justice who has fled to a country in which the United States exercises extraterritorial jurisdiction, and produces a copy of an indictment found or an affidavit made before a magistrate of the demanding jurisdiction, charging the fugitive so demanded with having committed treason, felony, or other offense, certified as authentic by the Governor or chief magistrate of such demanding jurisdiction, or other person authorized to act, the officer or representative of the United States vested with judicial authority to whom the demand has been made shall cause such fugitive to be arrested and secured, and notify the executive authorities making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear.

If no such agent shall appear within three months from the time of the arrest, the prisoner may be discharged.

The agent who receives the fugitive into his custody shall be empowered to transport him to the jurisdiction from which he has fled.

§ 3183. *Payment of fees and costs*

All costs or expenses incurred in any interstate rendition proceeding and apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.

[§3184. Fugitives from foreign country to United States

[Whenever there is a treaty or convention for extradition between the United States and any foreign government, any justice or judge of the United States, or any magistrate authorized so to do by a court of the United States, or any judge of a court of record of general jurisdiction of any State, may, upon complaint made under oath, charging any person found within his jurisdiction, with having committed within the jurisdiction of any such foreign government any of the crimes provided for by such treaty or convention, issue his warrant for the apprehension of the person so charged, that he may be brought before such justice, judge, or magistrate, to the end that the evidence of criminality may be heard and considered. If, on such hearing, he deems the evidence sufficient to sustain the charge under the provisions of the proper treaty or convention, he shall certify the same, together with a copy of all the testimony taken before him, to the Secretary of State, that a warrant may issue upon the requisition of the proper authorities of such foreign government, for the surrender of such person, according to the stipulations of the treaty or convention; and he shall issue his warrant for the commitment of the person so charged to the proper jail, there to remain until such surrender shall be made.]

[§ 3185. Fugitives from country under control of United States into the United States

[Whenever any foreign country or territory, or any part thereof, is occupied by or under the control of the United States, any person who, having violated the criminal laws in force therein by the commission of any of the offenses enumerated below, departs or flees from justice therein to the United States, shall, when found therein, be liable to arrest and detention by the authorities of the United States, and on the written request or requisition of the military gov-

ernor or other chief executive officer in control of such foreign country or territory shall be returned and surrendered as hereinafter provided to such authorities for trial under the laws in force in the place where such offense was committed.

[(1) Murder and assault with intent to commit murder;

[(2) Counterfeiting or altering money, or uttering or bringing into circulation counterfeit or altered money;

[(3) Counterfeiting certificates or coupons of public indebtedness, bank notes, or other instruments of public credit, and the utterance or circulation of the same;

[(4) Forgery or altering and uttering what is forged or altered;

[(5) Embezzlement or criminal malversation of the public funds, committed by public officers, employees, or depositaries;

[(6) Larceny or embezzlement of an amount not less than $100 in value;

[(7) Robbery;

[(8) Burglary, defined to be the breaking and entering by nighttime into the house of another person with intent to commit a felony therein;

[(9) Breaking and entering the house or building of another, whether in the day or nighttime, with the intent to commit a felony therein;

[(10) Entering, or breaking and entering the offices of the Government and public authorities, or the offices of banks, banking houses, savings banks, trust companies, insurance or other companies, with the intent to commit a felony therein;

[(11) Perjury or the subornation of perjury;

[(12) Rape;

[(13) Arson;

[(14) Piracy by the law of nations;

[(15) Murder, assault with intent to kill, and manslaughter, committed on the high seas, on board a ship owned by or in control of citizens or residents of such foreign country or territory and not under the flag of the United States, or of some other government;

[(16) Malicious destruction of or attempt to destroy railways, trams, vessels, bridges, dwellings, public edifices, or other buildings, when the act endangers human life.

[This chapter, so far as applicable, shall govern proceedings authorized by this section. Such proceedings shall be had before a judge of the courts of the United States only, who shall hold such person on evidence establishing probable cause that he is guilty of the offense charged.

[No return or surrender shall be made of any person charged with the commission of any offense of a political nature.

[If so held, such person shall be returned and surrendered to the authorities in control of such foreign country or territory on the order of the Secretary of State of the United States, and such authorities shall secure to such a person a fair and impartial trial.]

[§ 3186. Secretary of State to surrender fugitive

[The Secretary of State may order the person committed under sections 3184 or 3185 of this title to be delivered to any authorized

agent of such foreign government, to be tried for the offense of which charged.

[Such agent may hold such person in custody, and take him to the territory of such foreign government, pursuant to such treaty.

[A person so accused who escapes may be retaken in the same manner as any person accused of any offense.]

[§ 3187. Provisional arrest and detention within extraterritorial jurisdiction

[The provisional arrest and detention of a fugitive, under sections 3042 and 3183 of this title, in advance of the presentation of formal proofs, may be obtained by telegraph upon the request of the authority competent to request the surrender of such fugitive addressed to the authority competent to grant such surrender. Such request shall be accompanied by an express statement that a warrant for the fugitive's arrest has been issued within the jurisdiction of the authority making such request charging the fugitive with the commission of the crime for which his extradition is sought to be obtained.

[No person shall be held in custody under telegraphic request by virtue of this section for more than ninety days.]

[§ 3188. Time of commitment pending extradition

[Whenever any person who is committed for rendition to a foreign government to remain until delivered up in pursuance of a requisition, is not so delivered up and conveyed out of the United States within two calendar months after such commitment, over and above the time actually required to convey the prisoner from the jail to which he was committed, by the readiest way, out of the United States, any judge of the United States, or of any State, upon application made to him by or on behalf of the person so committed, and upon proof made to him that reasonable notice of the intention to make such application has been given to the Secretary of State, may order the person so committed to be discharged out of custody, unless sufficient cause is shown to such judge why such discharge ought not to be ordered.]

[§ 3189. Place and character of hearing

[Hearings in cases of extradition under treaty stipulation or convention shall be held on land, publicly, and in a room or office easily accessible to the public.]

[§ 3190. Evidence on hearing

[Depositions, warrants, or other papers or copies thereof offered in evidence upon the hearing of any extradition case shall be received and admitted as evidence on such hearing for all the purposes of such hearing if they shall be properly and legally authenticated so as to entitle them to be received for similar purposes by the tribunals of the foreign country from which the accused party shall have escaped, and the certificate of the principal diplomatic or consular officer of the United States resident in such foreign country shall be proof that the same, so offered, are authenticated in the manner required.]

[§ 3191. Witnesses for indigent fugitives

[On the hearing of any case under a claim of extradition by a foreign government, upon affidavit being filed by the person charged set-

ting forth that there are witnesses whose evidence is material to his defense, that he cannot safely go to trial without them, what he expects to prove by each of them, and that he is not possessed of sufficient means, and is actually unable to pay the fees of such witnesses, the judge or magistrate hearing the matter may order that such witnesses be subpenaed, and the costs incurred by the process, and the fees of witnesses, shall be paid in the same manner as in the case of witnesses subpenaed in behalf of the United States.]

[§ 3192. Protection of accused

[Whenever any person is delivered by any foreign government to an agent of the United States, for the purpose of being brought within the United States and tried for any offense of which he is duly accused, the President shall have power to take all necessary measures for the transportation and safekeeping of such accused person, and for his security against lawless violence, until the final conclusion of his trial for the offenses specified in the warrant of extradition, and until his final discharge from custody or imprisonment for or on account of such offenses, and for a reasonable time thereafter, and may employ such portion of the land or naval forces of the United States, or of the militia thereof, as may be necessary for the safekeeping and protection of the accused.]

[§ 3193. Receiving agent's authority over offenders

[A duly appointed agent to receive, in behalf of the United States, the delivery, by a foreign government, of any person accused of crime committed within the United States, and to convey him to the place of his trial, shall have all the powers of a marshal of the United States, in the Several districts through which it may be necessary for him to pass with such prisoner, so far as such power is requisite for the prisoner's safekeeping.]

[§ 3194. Transportation of fugitive by receiving agent

Any agent appointed as provided in section 3182 of this title who receives the fugitive into his custody is empowered to transport him to the State or Territory from which he has fled.]

[§ 3195. Payment of fees and costs

[All costs or expenses incurred in any extradition proceeding in apprehending, securing, and transmitting a fugitive shall be paid by the demanding authority.

[All witness fees and costs of every nature in cases of international extradition, including the fees of the magistrate shall be certified by the judge or magistrate before whom the hearing shall take place to the Secretary of State of the United States, and the same shall be paid out of appropriations to defray the expenses of the judiciary or the Department of Justice as the case may be.

[The Attorney General shall certify to the Secretary of State the amounts to be paid to the United States on account of said fees and costs in extradition cases by the foreign government requesting the extradition, and the Secretary of State shall cause said amounts to be collected and transmitted to the Attorney General for deposit in the Treasury of the United States.]

CHAPTER 210—INTERNATIONAL EXTRADITION

Sec.

3191. Extradition authority in general.
3192. Initial procedure.
3193. Waiver of extradition hearing and consent to removal.
3194. Extradition hearing.
3195. Appeal.
3196. Surrender of a person to a foreign state.
3197. Receipt of a person from a foreign state.
3198. General provisions for chapter.

§ 3191. Extradition authority in general

The United States may extradite a person to a foreign state pursuant to this chapter only if—

(a) there is a treaty concerning extradition between the United States and the foreign state; and

(b) the foreign state requests extradition within the terms of the applicable treaty.

§ 3192. Initial procedure

(a) IN GENERAL.—The Attorney General may file a complaint charging that a person is extraditable. The Attorney General shall file the complaint in the United States district court—

(1) for the district in which the person may be found; or

(2) for the District of Columbia, if the Attorney General does not know where the person may be found.

(b) COMPLAINT.—The complaint shall be made under oath or affirmation, and shall specify the offense for which extradition is sought. The complaint—

(1) shall be accompanied by a copy of the request for extradition and by the evidence and documents required by the applicable treaty; or

(2) if not accompanied by the materials specified in paragraph (1)—

(A) shall contain—

(i) information sufficient to identify the person sought;

(ii) a statement of the essential facts constituting the offense that the person is believed to have committed, or a statement that an arrest warrant for the person is outstanding in the foreign state; and

(iii) a description of the circumstances that justify the person's arrest; and

(B) shall contain such other information as is required by the applicable treaty;

and shall be supplemented before the extradition hearing by the materials specified in paragraph (1).

(c) ARREST OR SUMMONS.—Upon receipt of a complaint, the court shall issue a warrant for the arrest of the person sought or, if the Attorney General so requests, a summons to the person to appear at an extradition hearing. The warrant or summons shall be executed in the manner prescribed by rule 4(d) of the Federal Rules of Criminal Procedure. A person arrested pursuant to this section shall be taken without unnecessary delay before the nearest available court for an extradition hearing.

(d) DETENTION OR RELEASE OF ARRESTED PERSON.—

(1) The court shall order that a person arrested under this section be held in official detention pending the extradition hearing unless the person establishes to the satisfaction of the court that special circumstances require his release.

(2) Unless otherwise provided by the applicable treaty, if a person is detained pursuant to paragraph (1) in a proceeding in which the complaint is filed under subsection (b)(2), and if, within sixty days of the person's arrest, the court has not received—

(A) the evidence or documents required by the applicable treaty; or

(B) notice that the evidence or documents have been received by the Department of State and will promptly be transmitted to the court;

the court may order that the person be released from official detention pending the extradition hearing.

(3) If the court orders the release of the person pending the extradition hearing, it shall impose conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

§ 3193. Waiver of extradition hearing and consent to removal

(a) INFORMING THE COURT OF WAIVER AND CONSENT.—A person against whom a complaint is filed may waive the requirements of formal extradition proceedings, including an order of surrender, by informing the court that he consents to removal to the foreign state.

(b) INQUIRY BY THE COURT.—The court, upon being informed of the person's consent to removal, shall—

(1) inform the person that he has a right to consult with counsel and that, if he is financially unable to obtain counsel, counsel may be appointed to represent him pursuant to section 3006A; and

(2) address the person to determine whether his consent is—

(A) voluntary, and not the result of a threat or other improper inducement; and

(B) given with full knowledge of its consequences, including the fact that it may not be revoked after the court has accepted it.

(c) FINDING OF CONSENT AND ORDER OF REMOVAL.—If the court finds that the person's consent to removal is voluntary and given with full knowledge of its consequences, it shall, unless the Attorney General notifies the court that the foreign state or the United States objects to such removal, order the surrender of the person to the custody of a duly appointed agent of the foreign state requesting extradition. The court shall order that the person be held in official detention until surrendered.

(d) LIMITATION ON DETENTION PENDING REMOVAL.—A person whom the court orders surrendered pursuant to subsection (c) may, upon reasonable notice to the Secretary of State, petition the court for release from official detention if, excluding any time during which removal is delayed by judicial proceedings, the person is not removed from the United States within thirty days after the court ordered the person's surrender. The court may grant the petition unless the Sec-

retary of State, through the Attorney General, shows good cause why the petition should not be granted.

§ 3194. Extradition hearing

(a) In General.—The court shall hold a hearing to determine whether the person against whom a complaint is filed is extraditable, unless the hearing is waived pursuant to section 3193. The purpose of the hearing is limited. The court does not have jurisdiction to determine the merits of the charge against the person by the foreign state or to determine whether the foreign state is seeking the extradition of the person for the purpose of prosecuting or punishing the person for his political opinions. The hearing shall be held as soon as practicable after the arrest of the person or issuance of the summons.

(b) Rights of the Person Sought.—The court shall inform the person of the limited purpose of the hearing, and shall inform him that—

(1) he has the right to be represented by counsel and that, if he is financially unable to obtain counsel, counsel may be appointed to represent him pursuant to section 3006A; and

(2) he may cross-examine witnesses who appear against him and may introduce evidence in his own behalf with respect to the matters set forth in subsection (d).

(c) Evidence.—

(1) A deposition, warrant, or other document, or a copy thereof, is admissible as evidence in the hearing if—

(A) it is authenticated in accordance with the provisions of an applicable treaty or law of the United States;

(B) it is authenticated in accordance with the applicable law of the foreign state, and such authentication may be established conclusively by a showing that—

(i) a judge, magistrate, or other appropriate officer of the foreign state has signed a certification to that effect; and

(ii) a diplomatic or consular officer of the United States who is assigned or accredited to the foreign state, or a diplomatic or consular officer of the foreign state who is assigned or accredited to the United States, has certified the signature and position of the judge, magistrate, or other officer; or

(C) other evidence is sufficient to enable the court to conclude that the document is authentic.

(2) A certificate of affidavit by an appropriate official of the Department of State is admissible as evidence of the existence of a treaty or its interpretation.

(3) If the applicable treaty requires that such evidence be presented on behalf of the foreign state as would justify ordering a trial of the person if the offense had been committed in the United States, the requirement is satisfied if the evidence establishes probable cause to believe that an offense was committed and that the person sought committed it.

(d) Findings.—The court shall find that the person is extraditable if it finds that—

(1) there is probable cause to believe that the person arrested or summoned to appear is the person sought in the foreign state;

(2) the evidence presented is sufficient to support the complaint under the provisions of the applicable treaty;

(3) no defense to extradition specified in the applicable treaty, and within the jurisdiction of the court, exists; and

(4) the act upon which the request for extradition is based would constitute an offense punishable under the laws of—

(A) the United States;

(B) the State where the fugitive is found; or

(C) a majority of the States.

The court may base a finding that a person is extraditable upon evidence consisting, in whole or in part, of hearsay or of properly certified documents.

(e) POLITICAL OFFENSES AND OFFENSES OF A POLITICAL CHARACTER.—The court shall not find the person extraditable after a hearing under this section if the court finds that the person has established by clear and convincing evidence that any offense for which such person may be subject to prosecution or punishment if extradited is a political offense or an offense of a political character. For the purposes of this subsection, the terms "political offense" and "offense of a political character"—

(1) do not include—

(A) an offense within the scope of the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on December 16, 1970;

(B) an offense within the scope of the Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, signed at Montreal on September 23, 1971;

(C) a serious offense involving an attack against the life, physical integrity, or liberty of an internationally protected person (as defined in section 1116 of this title), including a diplomatic agent;

(D) an offense with respect to which a multilateral treaty obligates the United States to either extradite or submit for the purposes of prosecution a person accused of the offense;

(E) an offense that consists of the manufacture, importation, distribution, or sale of narcotics or dangerous drugs;

(F) an offense that consists of forcible sexual assault;

(G) an attempt or conspiracy to commit an offense described in subparagraphs (A) through (F) of this paragraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense; and

(2) except in extraordinary circumstances, do not include—

(A) an offense that consists of homicide, assault with intent to commit serious bodily injury, kidnaping, the taking of a hostage, or a serious unlawful detention;

(B) an offense involving the use of a firearm (as such term is defined in section 921 of this title) if such use endangers a person other than the offender;

(C) an attempt or conspiracy to commit an offense described in subparagraphs (A) or (B) of this paragraph, or participation as an accomplice of a person who commits, attempts, or conspires to commit such an offense.

The court shall not take evidence with respect to, or otherwise consider, an issue under this subsection until the court determines the person is otherwise extraditable. Upon motion of the Attorney General or the person sought to be extradited, the United States district court may order the determination of any issue under this subsection by a judge of such court.

(f) CERTIFICATION OF FINDINGS TO THE SECRETARY OF STATE.—

(1) If the court finds that the person is extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify its findings, together with a transcript of the proceedings, to the Secretary of State. The court shall order that the person be held in official detention until surrendered to a duly appointed agent of the foreign state, or until the Secretary of State declines to order the person's surrender.

(2) If the court finds that the person is not extraditable, it shall state the reasons for its findings as to each charge or conviction, and certify the findings, together with such report as the court considers appropriate, to the Secretary of State. The Attorney General may commence a new action for extradition of the person only with the agreement of the Secretary of State.

§ 3195. Appeal

(a) IN GENERAL.—Either party may appeal, to the appropriate United States court of appeals, the findings by the district court on a complaint for extradition. The appeal shall be taken in the manner prescribed by rules 3 and 4(b) of the Federal Rules of Appellate Procedure, and shall be heard as soon as practicable after the filing of the notice of appeal. Pending determination of the appeal, the district court shall stay the extradition of a person found extraditable.

(b) DETENTION OR RELEASE PENDING APPEAL.—If the district court found that the person sought is—

(1) extraditable, it shall order that the person be held in official detention pending determination of the appeal, or pending a finding by the court of appeals that the person has established that special circumstances require his release;

(2) not extraditable, it shall order that the person be released pending determination of an appeal unless the court is satisfied that the person is likely to flee or to endanger the safety of any other person or the community.

If the court orders the release of a person pending determination of an appeal, it shall impose conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community.

(c) SUBSEQUENT REVIEW.—No court has jurisdiction to review a finding that a person is extraditable unless the person has exhausted his remedies under subsection (a). If the person files a petition for habeas corpus or for other review, he shall specify whether the finding that he is extraditable has been upheld by a court, and, if so, shall specify the court, the date, and the nature of each such proceeding. A court does not have jurisdiction to entertain a person's petition for habeas corpus or for other review if his commitment has previously been upheld, unless the court finds that the grounds for the petition or appeal could not previously have been presented.

§ 3196. Surrender of a person to a foreign state

(a) RESPONSIBILITY OF THE SECRETARY OF STATE.—If a person is found extraditable pursuant to section 3194, the Secretary of State, upon consideration of the provisions of the applicable treaty and this chapter—

(1) may order the surrender of the person to the custody of a duly appointed agent of the foreign state requesting extradition;

(2) may order such surrender of the person contingent on the acceptance by the foreign state of such conditions as the Secretary considers necessary to effectuate the purposes of the treaty or the interest of justice;

(3) may decline to order the surrender of the person if the Secretary determines that—

(A) the foreign state is seeking extradition of the person for the purpose of prosecuting or punishing the person because of his political opinions, race, religion, or nationality; or

(B) the extradition of the person to the foreign state seeking his return would be incompatible with humanitarian considerations.

The Secretary may order the surrender of a person who is a national of the United States unless such surrender is expressly forbidden by the applicable treaty or by the laws of the United States. A decision of the Secretary under paragraph (1), (2), or (3) is final and is a matter solely within the discretion of the Secretary and is not subject to judicial review. In determining the application of paragraph (3), the Secretary shall consult with the appropriate bureaus and offices of the Department of State, including the Bureau of Human Rights and Humanitarian Affairs.

(b) NOTICE OF DECISION.—The Secretary of State, upon ordering a person's surrender or denying a request for extradition in whole, or in part, shall notify the person sought, the dipomatic representative of the foreign state, the Attorney General, and the court that found the person extraditable. If the Secretary orders the person's surrender, he also shall notify the diplomatic representative of the foreign state on the time limitation on the person's detention that is provided by subsection (c)(2).

(c) LIMITATION ON DETENTION PENDING DECISION OR REMOVAL.—A person who is found extraditable pursuant to section 3194 may, upon reasonable notice to the Secretary of State, petition the court for release from official detention if, excluding any time during which removal is delayed by judicial proceedings—

(1) the Secretary does not order the person's surrender, or decline to order the person's surrender, within forty-five days after his receipt of the court's findings and the transcript of the proceedings; or

(2) the person is not removed from the United States within thirty days after the Secretary ordered the person's surrender.

The court may grant the petition unless the Secretary of State, through the Attorney General, shows good cause why the petition should not be granted.

§ 3197. Receipt of a person from a foreign state

(a) APPOINTMENT AND AUTHORITY OF RECEIVING AGENT.—The Attorney General shall appoint an agent to receive, from a foreign state, custody of a person accused of a Federal, State, or local offense. The agent shall have the authority of a United States marshal. The agent shall convey the person directly to the Federal or State jurisdiction that sought his return.

(b) TEMPORARY EXTRADITION TO THE UNITED STATES.—If a foreign state delivers custody of a person accused of a Federal, State, or local offense to an agent of the United States on the condition that the person be returned to the foreign state at the conclusion of criminal proceedings in the United States, the Bureau of Prisons shall hold the person in custody pending the conclusion of the proceedings, and shall then surrender the person to a duly appointed agent of the foreign state. The return of the person to the foreign state is not subject to the requirements of this chapter.

§ 3198. General provisions for chapter

(a) DEFINITIONS.—As used in this chapter—

(1) "court" means—

(A) a United States district court established pursuant to section 132 of title 28, United States Code, the District Court of Guam, the District Court of the Virgin Islands, or the District Court of the Northern Mariana Islands; or

(B) a United States magistrate authorized to conduct an extradition proceeding;

(2) "foreign state", when used in other than a geographic sense, means the government of a foreign state;

(3) "foreign state", when used in a geographic sense, includes all territory under the jurisdiction of a foreign state, including a colony, dependency, and constituent part of the state; its air space and territorial waters; and vessels or aircraft registered in the state;

(4) "treaty" includes a treaty, convention, or international agreement, bilateral or multilateral, that is in force after advice and consent by the Senate; and

(5) "warrant", as used with a reference to a foreign state, means any judicial document authorizing the arrest or detention of a person accused or convicted of a crime.

(b) PAYMENT OF FEES AND COSTS.—Unless otherwise specified by treaty, all transportation costs, subsistence expenses, and translation costs incurred in connection with the extradition or return of a person at the request of—

(1) a foreign state, shall be borne by the foreign state unless the Secretary of State directs otherwise;

(2) a State, shall be borne by the State; and

(3) the United States, shall be borne by the United States.

* * * * * * *

APPENDIX

U.S. DEPARTMENT OF STATE,
Washington, D.C., September 21, 1983.

Hon. CHARLES H. PERCY,
Chairman, Committee on Foreign Relations, U.S. Senate.

DEAR MR. CHAIRMAN: The Secretary of State has requested me to respond to your letter of August 15, 1983 requesting coordinated Executive Branch comments on "part M of title X, the 'political offense' and related provisions" of S. 1762, entitled the "Comprehensive Crime Control Act of 1983".

The Department has been in contact with the Committee staff and concurs in the technical changes which they propose to make. In brief, three technical changes are suggested:

(a) that the word "rape" in section 3194(e)(1)(F) be deleted and that the words "forcible sexual assault" be inserted in its place;

(b) that the words "is persuaded" in section 3196(a)(3) be deleted and that the word "determines" be inserted in their place; and

(c) that the words "final and is" be inserted after the words "A decision of the Secretary under paragraph (1), (2), or (3) is" and that the words "review: *Provided, however*, That in" be deleted and the words "review. In" be inserted in their place in section 3196(a)(3). That portion of section 3196(a)(3) would then read: "A decision of the Secretary under pararaph (1), (2), or (3) is final and is a matter solely within the discretion of the Secretary and is not subject to judicial review. In determining the application of paragraph (3), the Secretary shall consult with the appropriate bureaus and offices of the Department of State, including the Bureau of Human Rights and Humanitarian Affairs."

I hope that this information is of assistance to the Committee.

The Office of Management and Budget has advised that from the standpoint of the Administration's program, there is no objection of the submission of the report.

Sincerely,

ALVIN PAUL DRISCHLER,
Acting Assistant Secretary,
Legislative and Intergovernmental Affairs.

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Calendar No. 405

98TH CONGRESS, 1st Session | SENATE | REPORT No. 98-242

MULTINATIONAL FORCE IN LEBANON

SEPTEMBER 26, 1983.—Ordered to be printed

Mr. PERCY, from the Committee on Foreign Relations, submitted the following

REPORT

together with

MINORITY AND SUPPLEMENTAL VIEWS

[To accompany S.J. Res. 159]

The Committee on Foreign Relations, to which was referred the joint resolution (S.J. Res. 159) having considered the same, reports favorably thereon with amendments and recommends that the joint resolution as amended do pass.

PURPOSE

The purpose of this joint resolution is to authorize the continued participation of United States Armed Forces in the Multinational Force in Lebanon by making the determination called for in Section 4(a)(1) of the War Powers Resolution of 1973 and providing the specific statutory authorization required by Section 5(b) of that Resolution.

BACKGROUND

The Administration decided in August 1982, to send a contingent of U.S. Marines to Beirut as part of a multinational force to help facilitate the PLO's evacuation from the Lebanese capital. On August 20, 1982, following consultations with President Reagan on the use of U.S. forces in such a role, Senators Percy and Pell wrote

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to the President, recommending that he report this deployment under Section 4(a)(1) of the War Powers Resolution. On August 21, 800 French troops arrived, the first contingent of the Multinational Forces (MNF), and on August 25, 800 U.S. Marines landed in Beirut. President Reagan reported to the Congress "consistent with the War Powers Resolution" but stated the Marines would not be in a hostile situation and would be withdrawn within 30 days. On September 1, President Reagan announced his Middle East Peace initiative. On September 11, the Marines were withdrawn.

On September 16, President Bashir Gemayal of Lebanon was assassinated, and on September 16–18, a massacre took place at the Sabra and Shatila Palestinian refugee camps. President Reagan announced on September 21 that U.S. Marines would return to Lebanon as part of an international force. On September 24, Senators Percy and Pell again wrote to the President recommending that the reintroduction of U.S. troops be reported under Section 4(a)(1). On September 29, U.S. Marines took over the Beirut airport area and President Reagan submitted a report "consistent with the War Powers Resolution" but insisting that the Marines were "not expected to become engaged in hostilities." On December 15, 1982, 14 Committee Members wrote to the President to say they "would expect Congress to be involved at the earliest possible stage . . . and that formal Congressional authorization would be sought before undertaking long-term or expanded commitments or extending indefinitely the present level of operations."

On March 1, 1983, Senator Percy introduced the Lebanon Emergency Assistance Act to provide $100 million in military aid loans and $150 million in economic aid to Lebanon. The Committee reported that bill on May 5 with a requirement that Congress authorize "any substantial change in the number or role of United States Armed Forces in Lebanon." On May 17, Israel and Lebanon signed the Israeli withdrawal agreement. On May 20, the Senate passed the Committee's bill. The House passed it on June 1 in a slightly modified form, and President Reagan signed it into law on June 27.

In mid-August of this year, fighting broke out between Lebanese Army units and Moslem militia men in South and West Beirut and on August 28, U.S. Marines at the Beirut airport came under fire for the first time. They returned fire, but there were no Marine casualties. However, on August 29, 2 U.S. Marines died and 14 were wounded by hostile shelling. The Marines returned fire, including the use of a helicopter gunship. On August 31, the Senate received a report from President Reagan "consistent with Section 4 of the War Powers Resolution," explaining the circumstances of the Marine casualties but expressing the view that the danger to U.S. forces would be temporary.

On September 3, Israel began its re-deployment to the Awali River. On September 4, heavy fighting broke out between Druze and Christian militia for control of the Chouf. President Reagan told Congressional leaders that the United States had no plans to commit additional troops. On September 6, two more U.S. Marines were killed and two wounded during shelling of the Beirut airport. On September 8, U.S. Navy ships were used to fire back at guns shelling Marine positions.

On September 12, Senator Mathias introduced S.J. Resolution 159, triggering the expedited procedures of Section 6 of the War Powers Resolution. On September 13, following heavy attacks by Druze, Syrian and Palestinian forces on strategic heights overlooking Beirut, the White House said the Marines are now authorized to call on naval and air power not only to defend themselves directly but also to aid other MNF forces and the Lebanese Army in certain circumstances. On September 14, Senator Byrd introduced S.J. Resolution 163, making a congressional determination that Section 4(a)(1) of the War Powers Resolution applied to the situation in Lebanon. On September 19, U.S. navy ships fired several hundred shells to help the Lebanese Army beat back attacks on Suq al Gharb, a mountain village on a strategic ridge near Beirut. On September 20, following negotiations with the White House and House Leaders, Senators Baker and Percy introduced S.J. Resolution 166. A companion measure was introduced in the House.

COMMITTEE ACTION

Following the reconvening of the Senate, the Committee held a hearing on September 13 to discuss the situation in Lebanon with officials of the Administration. Assistant Secretary of State Nicholas Veliotes, State Department Legal Advisor Davis Robinson, Director of Political-Military Affairs Jonathan Howe, and Marine Commandant Paul X. Kelly testified before the Committee. On September 21, Secretary of State George Shultz and General Kelly appeared at a second Committee hearing to review the situation in Lebanon and to hear the position of the Reagan Administration with respect to the several resolutions pending before the Committee.

On September 23, the Committee met to consider the pending resolutions on Lebanon and the War Powers Resolution: S.J. Res. 159, offered by Senator Mathias, S.J. Res. 163, offered by Senator Byrd, and S.J. Res. 166, offered by Senator Baker. Prior to voting, Senator Pell requested that Senator Byrd's resolution not be voted on by the Committee at that time.

Senator Mathias' resolution, S.J. Res. 159, was the first order of business. He offered two amendments to his own resolution, one dealing with more frequent reporting requirements and one concerning expedited procedures for future resolutions related to authorizations within the War Powers Resolution framework. Both were adopted by voice vote. Senator Baker then offered his resolution, S.J. Res. 166—modified to include the two Mathias amendments just referred to—as a complete substitute to the Mathias language. Senator Cranston then offered an amendment which would have displaced the Baker proposal. The Cranston proposal would have limited the joint resolution to a simple declaration that the conditions described in Sections 4(a)(1), 4(a)(2), and 4(a)(3) of the War Powers Resolution are now in effect. The Cranston amendment was defeated by a vote of 9 to 7. Senators voting for the Cranston amendment were Pell, Biden, Glenn, Sarbanes, Zorinsky, Cranston, and Dodd. Senators voting against the amendment were Percy, Baker, Helms, Lugar, Mathias, Kassebaum, Boschwitz,

Pressler, and Murkowski. Senator Baker's amendment was then adopted by the reverse vote of 9 to 7.

Senator Pell then offered an amendment to reduce the duration of the authorization from 18 months to 6 months. That amendment was adopted by a vote of 9 to 8, with the following Senators voting in the affirmative: Mathias, Pell, Biden, Glenn, Sarbanes, Zorinsky, Tsongas, Cranston, and Dodd. Senators voting in the negative were Percy, Baker, Helms, Lugar, Kassebaum, Boschwitz, Pressler, and Murkowski. After some discussion, Senator Mathias joined with those voting against the Pell amendment in voting for a motion to reconsider that amendment. With the exception of Senator Mathias, those Senators who had voted for the Pell amendment now voted against the motion. The vote was 9 to 8. On reconsideration, the Pell amendment was then defeated by a voice vote.

The Committee then ordered S.J. Res. 159, as amended by the modified text of S.J. Res. 166, reported favorably to the Senate at the opening of the Senate on Monday, September 26, when, in accordance with the requirements of Section 6 of the War Powers Resolution, it becomes the pending business before the Senate and must be voted on within three calendar days. This report contains the recommendations of the Committee on that resolution, as required by law.

COMMITTEE COMMENTS

United States Policy in Lebanon

American objectives.—The Committee believes that Lebanon cannot be isolated from the wider issues of peace and security in the Middle East. The Committee concurs in Secretary Shultz's assessment that "progress toward a peaceful solution in Lebanon will contribute to the broader peace process; setbacks in Lebanon will make the broader effort that much harder."

In the Committee debate, Senator Boschwitz emphasized that the Administration had articulated consistent policy objectives in Lebanon ever since the Marines were first deployed to Beirut in August 1982. In a letter to the Congress on August 24, President Reagan stated that the deployment of the Marines would not in itself resolve the problems of Lebanon. Nevertheless, the Marines would improve the prospects for realizing our objectives in Lebanon: a permanent cessation of hostilities; establishment of a strong, representative central government; withdrawal of all foreign forces; restoration of control by the Lebanese Government throughout the country; and establishment of conditions under which Lebanon no longer can be used as a launching point for attacks against Israel.

These objectives remain the basis of our policy in Lebanon as outlined by Secretary Shultz before the Foreign Relations Committee on September 21, 1983. Similar objectives are cited in the resolution reported out by the Committee.

The Committee notes that a number of steps are being taken to attain these broad policy objectives. American participation in the multinational force is only one of these. Diplomacy remains the principal component, and the diplomatic efforts are supported by the peacekeeping efforts of the Multinational Force. While progress has not been as rapid as hoped for during the past year, important

steps have been taken. In May, the Government of Israel and Lebanon with the assistance of the United States reached agreement on the withdrawal of Israeli forces from Lebanon. Unfortunately, Syria has not been willing to discuss the withdrawal of its forces despite a formal request from the Government of Lebanon. The Lebanese Government, with our support, also has requested the Arab League to arrange the withdrawal of the Syrians, and is working with moderate Arab countries to achieve that objective. There appears to be a false impression that little is being done on the Lebanese political front.

However, as Senator Boschwitz pointed out, with American encouragement, the Government of President Gemayal has begun the process of reconciliation with dissident segments of the population. On August 31 President Gemayal, with his multiconfessional cabinet, issued an appeal to key supporters and opponents to join in a dialogue on national reconciliation and unity. Although the initial appeal was rejected and the Syrians blocked the participation of some top Muslim political leaders, American Ambassador McFarlane and others are still pressing efforts to reach an agreement.

The Committee supports these attempts and believes the Government of Lebanon must represent fairly all communal and ethnic groups. Injustice and privilege must be eliminated, and security concerns alleviated, if the Lebanese will ever reassert national sovereignty.

The Committee also supports efforts to rebuild national institutions which were fractured by 8 years of civil conflict and foreign occupation. Foremost of these institutions is a truly national army. Much progress has been made in a relatively short period of time. Significant American aid has helped finance equipment for a mechanized brigade and American personnel have helped train several brigades. As a consequence, the Lebanese Army, which is divided almost evenly between Christians and Muslims, has performed well in recent difficult circumstances. When armed gunmen seized control of the streets of Beirut several weeks ago, for the first time in a decade the Lebanese Army was able to reassert its control over the city. In the mountains, the Lebanese Army has faced a force composed of Palestinians, Syrians, Iranians and Lebanese Druze. The Lebanese Army again has performed well. The Committee recognizes the difficulty of rebuilding a national Army in such a fragmented society and has no illusion that the task will be easily accomplished. The MNF provides important symbolic and other support for this task.

The role of the marines.—The Multinational Force, which includes a contingent of U.S. Marines, is another vehicle for implementing our broader policy objectives in Lebanon. The Committee agrees with Secretary Shultz's assurance that "it is not the mission of our Marines, or of the MNF as a whole, to maintain the military balance in Lebanon by themselves . . . They are an important deterrent, a symbol of the international backing behind the legitimate Government of Lebanon . . ."

The Committee understands that the role of the Marines is limited. The authorization of the presence of the Marines does not remove previous limitations on their deployment. Marine activities are restricted to the "Beirut area" and the number of Marine

combat troops based onshore will remain approximately 1,200. The Resolution specifically states that it does not modify Section 4 of the Lebanese Emergency Assistance Act of 1983 which require congressional authorization for any substantial expansion in the number or role of the U.S. peacekeeping forces.

18-Month authorization.—The Committee voted to authorize the continued presence of U.S. forces for an additional 18 months rather than for a shorter period of 6 months. The debate centered on three issues: (1) would the shorter period place the Marines in a more dangerous position; (2) how would American policy objectives be affected by the shorter period; and (3) how would the congressional prerogatives be affected by a longer period.

The Executive Branch opposed any reference to a specific time period. The 18-month period was part of a compromise reached by the Majority Leadership of the Senate and House with the Executive Branch.

A strong concern was expressed that the compromise might fall apart if Congress imposed a shorter period. This concern prevailed in the Committee's deliberations. Senator Mathias observed that "we are dealing with a very delicate process here." The Senator expressed concern that the broad principles of the War Powers compromise might be abandoned and not reach the floor if the shorter 6-month period was adopted by the Committee. Senator Mathias, who indicated his support for a 6-month period, nevertheless said he felt the issue should be ultimately resolved on the Floor.

During the Committee's hearings and debate, witnesses and Members expressed fears that a shorter time period could result in increased hostile fire on the Marines and complicate the efforts to negotiate a ceasefire and political settlement.

Marine Corps Commandant Paul X. Kelley testified to the Committee on September 13 that a short time limit might stimulate more attacks on the Marines in an effort to encourage a public outcry for their withdrawal. He commented that "I am concerned that we could impose what could prove to be a dangerous time constraint that would be misread by our potential adversaries * * *. It would encourage hostile forces or forces inimical to the best interests, the life and limb of Marines. It would encourage them to be more provocative in an attempt to arouse public sentiment * * *. There still is a possibility that hostile forces would use this as an opportunity to up the ante against our Marines."

A great deal of concern was also expressed about how a short time period would be interpreted in the Middle East, especially in Damascus. The Syrians are aiding the Druze, who have been shelling Marine positions. Senator Percy said a 6-month time limit "might send a false signal which might encourage and place great incentive on the part of the Syrians to make attacks." Members warned that attacks might be increased in an effort to alter American opinions in advance of another debate over the extension of the forces 6 months from now.

A short time period also might encourage the anti-government forces to drag their feet in negotiations. The United States has been prodding the government of Amin Gemayal to take part in talks aimed at forming a broader government of conciliation. President Gemayal recently issued a call for such a conference. But the

Syrians have been blocking these efforts, even vetoing the proposed participation of the Lebanese Prime Minister and Speaker of the House, both Muslims. Many believe the Syrians are stalling for time, hoping that continued military pressure on the Lebanese Army and on the Multinational Force will result in the military collapse of the former and the withdrawal of the latter.

Assistant Secretary of State Nicholas Veliotes described the diplomatic problem in the September 13 hearing, saying, "There would be no incentive on the part of those who oppose our policy in Lebanon to seek anything other than a series of violent confrontations, thinking to wait for the time limit and then influence American opinion in the Congress. We think that a six-month authorization would be a grave error."

By contrast, approval of an 18-month time period shows that the United States is willing to exercise patience as well as diplomacy, to give the peacekeeping efforts and negotiations a chance. Secretary of State Shultz testified on September 21 that "the 18-month period seemed like along enough period so that you had some room for maneuver, and it had the effect of allowing people who were concerned both on the Congressional side of this constitutional issue and the Presidential side both to keep their principles intact."

None of the Members of the Committee expects that the problems in Lebanon will be solved quickly or easily. But it is the view of the majority that a 6-month time period would reduce prospects for success even further.

In acting on the Resolution, the Committee also approved two amendments by Senator Mathias which provide Congress with additional check reins. Congress will receive reports from the Administration every 3 months on the current situation. More important, from the procedural view, the Resolution was amended to ensure that in the event a resolution to repeal the authorization is reported by this committee or the House Foreign Affairs Committee, it will be considered in each House under expedited procedures. This combined approach of the 18-month authorization and the procedural amendments should help serve the peacekeeping and diplomatic efforts and the institutional requirements of both branches of governments.

WAR POWERS

Applicability of the War Powers Resolution

(1) *Actual or imminent hostilities.*—Section 2(b) of this Resolution includes a Congressional determination that actual or imminent hostilities involving U.S. Armed Forces clearly came into being on August 29, 1983.

The President's report to the Congress describes the circumstances surrounding the heavy exchanges of fire on that date:

> On August 29, sporadic fighting between Lebanese Armed Forces and various armed factions took place in South Beirut; from time to time during the course of this fighting, positions in the vicinity of the Beirut airport manned by U.S. Marines of the MNF came under small-

> arms fire (without injury to U.S. personnel), and this fire was returned. On August 29, fighting erupted again. Marine positions came under mortar, rocket, and small-arms fire, with the result that two Marines were killed and fourteen wounded. In addition, several artillery rounds fell near the *USS Iwo Jima* (an amphibious support vessel lying offshore), with no resulting damage or injuries. As contemplated by their rules of engagement; U.S. Marines returned fire with artillery, small arms, and, in one instance, rocket fire from a helicopter gunship. There were additional exchanges of fire earlier today, August 30, without injury to U.S. personnel.

Such exchanges have continued, with additional casualties and fatalities, until the present. Naval gunfire support on specific locations has been carried out in an effort to protect our forces on the ground. In addition, tactical air support and reconnaissance has been authorized. Although there have been continuing efforts to arrange a ceasefire and to achieve a broader, more permanent arrangement which would reduce the occurrence or imminence of hostilities, there is no immediate indication that this situation will soon change significantly. Therefore, the hostile situation has been a continuing one.

In enacting the War Powers Resolution in 1973, Congress made little effort to go beyond the "plain meaning" of key terms "hostilities" and "situations where imminent involvement in hostilities is clearly indicated by the circumstances." These terms originated in the early Senate versions of the Resolution and prompted little subsequent discussion. The House Foreign Affairs Committee later substituted them for its original phrase, "armed conflict," because the term "hostilities" was considered "somewhat broader in scope." "In addition to a situation in which fighting actually has begun," the Committee wrote, "hostilities also encompasses a state of confrontation in which no shots have been fired but where there is a clear and present danger of armed conflict."

In short, the exchange of fire with hostile forces would indicate an outbreak of hostilities, and a high probability of such exchanges would suggest "imminent involvement." Brief, non-recurring situations such as occasional sniper fire would not suggest the continuing dangers associated with an ongoing set of hostile circumstances.

Arguments have been made that a hostile situation was not indicated by the present circumstances because the Marines:

(a) Only returned rather than initiated fire;

(b) Acted only in self-defense;

(c) Remained essentially in one location, rather than taking offensive actions;

(d) Performed a mission of "peacekeeping," "presence," or "interposition".

However, there is nothing in the legislative history of the War Powers Act to indicate that any of these considerations would alter the fact that "hostilities" are indicated. For the same reason, it is not conclusive that an area commander may have decided, as in the present situation, to make his men eligible for "hostile fire

pay." Nor is it necessary or sufficient that fatalities occur in order to conclude that hostilities are involved.

(2) *Need for authorization or extension.*—The requirements of Section 5(b) of the War Powers Resolution speak for themselves:

> (b) Within 60 calendar days after a report is submitted or is required to be submitted pursuant to section 4(a)(1), whichever is earlier, the President shall terminate any use of United States Armed Forces with respect to which such report was submitted (or required to be submitted), unless the Congress (1) has declared war or has enacted a specific authorization for such use of United States Armed Forces, (2) has extended by law such 60-day period, or (3) is physically unable to meet as a result of an armed attack upon the United States. Such 60-day period shall be extended for not more than an additional 30 days if the President determines and certifies to the Congress in writing that unavoidable military necessity respecting the safety of United States Armed Forces requires the continued use of such armed forces in the course of bringing about a prompt removal of such forces.

Two points about this language should be emphasized, however. First, the actual submission of a report by the President is not a prerequisite to the operation of the requirement for an authorization. The language "submitted or is required to be submitted" was obviously intended to cover situations in which the required report is either not submitted at all or is submitted late. In other words, the President does not need to certify that a hostile situation is involved under Section 4 in order to be bound by the requirement for an authorization in Section 5.

Second, the available 30-day extension of the deadline is not simply a matter of Presidential discretion. The President must certify that he is in the course of withdrawing U.S. forces and needs the extra time in order to do so safely because of "unavoidable military necessity."

(3) *Congressional procedures.*—Assuming that hostilities involving U.S. forces can be said to have begun on August 29, the 60-day period began on August 31, since that is when the report would have been due. (It also happens to be the date on which the President's report of August 30 was actually submitted, which is the alternative starting point.) In other words, the War Powers Resolution allows for a 62-day period from the outbreak of hostilities. Counting forward 60 days from August 31 would be October 30.

Under Section 6 of the War Powers Resolution, the Committee Resolution becomes the pending business in the Senate as soon as it is reported, after which the Senate has up to three calendar days to vote on it. Further procedures are prescribed to assure Committee and floor consideration by the House and a House-Senate Conference prior to the 60-day deadline. The House Foreign Affairs Committee approved a nearly identical resolution on September 22 by a vote of 30 to 6.

To facilitate congressional oversight of this authorization the Committee added two further procedures proposed by Senator Mathias. One provision would require the President to provide de-

tailed reports on the situation of the Multinational Force every 3 months. A second provision assures that resolutions to amend or repeal this authorization shall be considered in Committee within 15 days and, if reported to the Senate, shall receive consideration in both the House and Senate. Such consideration is also assured for changes reported by the House Foreign Affairs Committee.

Constitutional considerations

This is the first time since the enactment of the War Powers Resolution on November 7, 1973, that Congress has faced the task of considering a specific authorization for the involvement of U.S. Armed Forces in hostilities. The text and history of the War Powers Resolution provide little guidance as to how such an authorization should be drafted. The War Powers Resolution was passed to ensure that Congress would have an opportunity to exercise its constitutional responsibilities; the Resolution itself gives little guidance about how it was supposed to do so in any given case.

(1) *Declaration of war analogy.*— One approach is to regard the task of Congress in enacting a specific authorization as similar to its function in declaring war. The power to declare war, of course, is the particular authority and function assigned to Congress in Article I, Section 8 of the Constitution. By this analogy, the role of Congress is to decide the general question of whether a particular commitment of forces to hostilities in a given part of the world is worth the costs and risks expected from it. Once having exercised this broad judgment—and acting as a check upon Presidential excesses—Congress arguably should not seek to limit or direct the activities of the Armed Forces. Such decisions (so the argument might run) were meant to be exercised only by the President as Commander in Chief, under Article II, Section 2. Frustration with the efforts of the Continental Congress to prosecute the Revolutionary War and subsequent conflicts led the drafters of the Constitution to limit Congressional involvement to the power to "declare" rather than to "make" war as originally proposed. Thus, declarations of war have typically been brief, general statements, without time limits or other specific restrictions.

(2) *Legislative limitations.*—A different approach to the drafting of a specific authorization is to enact particular limitations or criteria which circumscribe the scope of the commitment. Such specifications might include the duration, location, size, cost and mission of U.S. deployments, as well as requirements based upon future developments. Presidents have traditionally resisted such constraints as infringements on the Commander in Chief power, but no definitive resolution of such questions has ever been achieved.

Members of Congress are therefore confronted with the need to decide a novel issue regarding the role appropriate of the legislative branch: how far should the Congress go in defining the authority being granted to the President in a situation of hostilities? Is it appropriate for Congress to try to predict, and to protect legislatively against, every foreseeable risk which our forces might encounter in their mission, or to anticipate and define each angle of Presidential flexibility to respond to events? Or is it part of the responsibility which Congress is insisting upon for itself under the

Constitution to recognize the inevitable risks and costs of any foreign military involvement—and to accept such risks as part of the decision to approve its initiation or continuation?

Scope of Senate Joint Resolution 159

The authorization recommended by the Committee takes a middle ground on the question of general approval and specific limitations. While confining its terms to the mandate of the Multinational Force and preserving existing statutory provisions relating to "any substantial expansion in the number or role", the resolution recognizes the possible need for "protective measures to ensure the safety of the Multinational Force".

As the Chairman of the Committee, Senator Percy, has argued, any suggestion that the terms of this authorization resemble the Tonkin Gulf Resolution of 1964 or amount to a "blank check" for Presidential actions is simply unfounded. The resolution is limited and specific in a number of respects.

(1) *Duration.*—Attention has focused on the 18-month duration of this proposed authorization, as if time limitations are the only effective measure of statutory restraints. Six months has become the benchmark of those who regard this proposal as a "blank check." In fact, however, any time limit is an arbitrary choice, having little to do with the events in Lebanon or the policy choices involved in maintaining a Multinational Force. If Congress is to decide in the future against further U.S. participation, it could just as easily make such a judgment in 2 months or 10 months.

(2) *Active oversight.*—Whatever the time limits, the test of Congressional responsibility will be the degree to which Congress actively follows the situation in Lebanon and, if necessary, takes steps to adjust this authorization once it is enacted. Senator Mathias offered two amendments in the Committee, both adopted by voice vote, which increase the ability of Congress to play such as active role. His amendment to Section 4 requires the President to report to Congress every 3 months, rather than every 6 months, on the situation in Lebanon and the steps being taken to fulfill the objective of the Multinational Force. His second amendment added a new Section 8 to the resolution, providing for expedited procedures in the consideration of any amendment or repeal of this authorization. Even with these additions, of course, Congress must follow through in the exercise of its responsibilities through oversight and amendment. Such an approach is far preferable to restrictions which avoid the difficult choices and prevent the possibility of decision through inaction.

(3) *Limited mandate.*—The authorization contained in this resolution is limited to the functions of the Multinational Force in Lebanon. Section 6 of the resolution provides that U.S. participation "shall be subject to the limitations, specified in the agreement establishing the Multinational Force in Lebanon" of September 25, 1982. (See Appendix for text.)

Three principal limitations on the U.S. role are contained in that agreement: the number of U.S. troops will be approximately 1,200, they will operate in the Beirut area in support of the Lebanese Government, and they are not expected to perform a combat mission. According to Marine Commandant Kelley, in his testimony of Sep-

tember 21 before the Committee, the number of Marine personnel actually on the ground in Lebanon has been closer to 1,500, since about 300 support personnel are rotated onshore at any given time. But the size, location, and mission of U.S. forces have not substantially changed, despite the outbreak of active hostilities last month.

(4) *Protective measures.*—The Committee recognizes that performing the role of peacekeeping forces is a new and unfamiliar role, not only for the troops themselves, but for the U.S. Government and the American public as well. Having to stand between hostile forces in the same, sometimes vulnerable locations without taking and maintaining the offensive can be a difficult posture to maintain, particularly for United States Marines. From time to time, U.S. forces must respond to direct attacks or take protective actions for their own defense. The Committee does not believe that such actions necessarily change the role of the U.S. forces, so long as the task of the U.S. forces is not to duplicate or supplant the functions of the Lebanese Armed Forces or to redeploy from the Beirut area, or in other respects to exceed the limited mandate of the Multinational Force or the limitations of the Lebanon Emergency Assistance Act of 1983.

From the outset of the Multinational Force, it has been assumed that the various national contingents are part of a common effort. Therefore, not only do they have the usual right to defend themselves, as recognized in the September 25 agreement, but also a general responsibility to come to each other's assistance when called upon to do so. The resolution therefore acknowledges the possible necessity of actions "to ensure the safety" of other contingents of the Force.

(5) *Limitations on expansion.*—"Any substantial expansion in the number or role in Lebanon of United States Armed Forces" would call into play the provision of Section 4(a) of the Lebanon Emergency Assistance Act, requiring the President to seek authorization for such expansion. That legislation was signed by the President on June 27 of this year. Section 7 of this resolution makes clear that it is not intended to affect that requirement.

However, during the Committee's hearing on September 21 with Secretary of State Shultz, some question arose as to whether the Reagan Administration felt constrained by this provision.

> Senator SARBANES. * * * Is it the Administration's position that what they need to do is consult with the Congress, or that they need to obtain an authorization from the Congress, that they could not expand the number or role without a specific Congressional authorization?
>
> Secretary SHULTZ. I think the President, or perhaps any of you if you were President, thinking about your role, your Constitutional role as Commander in Chief, would be very reluctant to tie your hands and say that you could only order U.S. forces to do something or other after the Congress had authorized it.
>
> Senator SARBANES. So it is your position, then, that you could substantially expand them without a Congressional authorization?

> Secretary SHULTZ. The constitutional reservation goes to the President's role as Commander in Chief, and therefore to his capacity to be in charge of the deployment of the armed forces of the United States. I have no doubt that he will continue to assert that role.

The Committee is concerned that Secretary of State Shultz seemed reluctant to accept the need for an authorization to expand substantially the number or role of U.S. forces in Lebanon as required by law. That provision was adopted after very careful deliberation by this Committee and on the basis of very clear assurances by the Reagan Adminstration that it would seek an authorization for that purpose. However, it is true, as the legislative history of this provision clearly reveals, that Congress did not insist upon specific prior authorization for any such expansion in numbers or role. The issue of prior authorization was a principal subject of discussion in the Committee and on the House side. The Administration strongly opposed any such requirement and, in the end, the Congress did not insist upon it. The following statement by Congressman Hamilton during the final debate on June 1 on a House-Senate compromise version of the bill, described the congressional interpretation of this provision:

> The requirement for congressional authorization is not meant to impede the performance of the limited functions currently being performed by the U.S. Marines in Beirut or to interfere with their ability to defend themselves if attacked. However, any decision to expand significantly the role in Lebanon of United States Armed Forces would require statutory authorization.
>
> If possible, the President should obtain authorization from the Congress before any significant change is made in the size or role of the U.S. forces in Lebanon. The Congress is aware, however, that in order to promote peace within Lebanon and fulfill international commitments, the deployment of a new or expanded peacekeeing force involving U.S. forces might be necessary prior to final passage of congressional authorization." However, congressional action should be obtained at the earliest possible time. In any case, the Congress expects full consultations by the executive branch with the Congress in a timely fashion should any change be contemplated in the size or role of U.S. forces in Lebanon, including any change in conjunction with the creation of a new peacekeeping force.

In its own final deliberations on this provision, the Committee acted on the basis of assurances contained in an April 20 letter from Deputy Secretary of State Kenneth Dam:

> THE DEPUTY SECRETARY OF STATE,
> *Washington, April 20, 1983.*
>
> Hon. CHARLES H. PERCY,
> *Chairman, Committee on Foreign Relations,*
> *U.S. Senate.*
>
> DEAR MR. CHAIRMAN: I understand that the House Foreign Affairs Committee has adopted an amendment to the Lebanon sup-

plemental which provides that the President shall obtain statutory authorization from the Congress with respect to the introduction of U.S. Armed Forces into Lebanon in conjunction with agreements for the withdrawal of foreign forces and the creation of a new multinational force. *I understand that this language was deliberately drafted so as not to interfere with the President's ability to begin such an introduction, if circumstances urgently require it, while Congress is considering his request for statutory authorization.*

Under these circumstances, the HFAC amendment correctly described what this administration intends to do, is consistent with what we have done in comparable situations in the past (such as the Sinai Multinational Force), and is therefore acceptable to us. *It is our intention to seek authorization from Congress as soon as possible following the completion of the ongoing negotiations, and we trust that Congress and the executive branch would then work expeditiously together with the objective of obtaining such authorization, if at all possible, prior to such new deployments.*

I strongly hope that your committee will not find it necessary to deal with this question in the context of section 4(a)(1) of the war powers resolution. It would be highly premature and unwise, and potentially damaging to the integrity of the resolution, for Congress to prejudge the possible applicability of that section to future arrangements which have not yet been negotiated and future circumstances which cannot yet be predicted. Such an action, which would amount to a public finding that U.S. forces will be exposed to an imminent risk of involvement in hostilities, is in no way a foregone conclusion, and could give entirely the wrong public impression as to what results these negotiations are intended to produce. Surely it would be far preferable for Congress to reserve judgment on this matter (as we will) until it can evaluate the circumstances as they develop, knowing that the provisions of the war powers resolution will, of course, remain available.

I appreciate this opportunity to comment on your committee's work, and hope that we can arrive at a result which accommodates our mutual interests in this matter.

Sincerely,

KENNETH W. DAM.

[Emphasis added.]

The Committee expects that the commitments made the Administration on this point will be kept.

Institutional accommodations

This resolution is the reflection of a delicate compromise, carefully constructed in recognition of the firmly-held positions of both the legislative and executive branches. However, the Committee believes that the resolution is fully consistent with, and supportive of, the constitutional role of Congress recognized in the War Powers Resolution. As our former colleague Jacob Javits—the principal Senate author of the War Powers Resolution—expressed it in a statement provided to all Members prior to the markup:

> The Administration and the Congress have each gained a major point in the proposed compromise on the War Powers Resolution. Congress has established the proposi-

tion that it may set the clock running under the resolution even if the President does not trigger it by giving the appropriate notice under the proper section of the resolution when U.S. troops are deployed abroad into hostilities or the imminent threat of them. The President has gained the point that for the situation in Lebanon the authority Congress gives him to continue their involvement must be by joint not concurrent resolution, thereby, requiring the President's signature. This compromise avoids a constitutional crisis at this juncture. Though it may not settle the issue, it is an important step along the way.

MINORITY VIEWS

We strongly oppose the joint resolution on Lebanon sponsored by Senators Baker and Percy and approved in the Foreign Relations Committee by a vote of 9–7. In our judgment, its enactment would constitute (1) a dereliction of Congressional responsibility to uphold the principles and procedures of the War Powers Resolution of 1973; (2) a failure to require of the Administration a clearly articulated and persuasive statement of the mission which U.S. Marines have been deployed in Lebanon to implement; and (3) an 18-month "blank check" under which the Administration could pursue hitherto unspecified military objectives in Lebanon while asserting that it is operating with full Congressional sanction. These gravely serious flaws warrant elaboration:

(1) *Dereliction of congressional responsibility relating to the War Powers Resolution.*—The Baker-Percy language has been presented as a "bipartisan compromise" which, in the interest of avoiding a dispute over "legalisms," would allow Congress and the executive to affirm principles which are in conflict. This would present, it is argued, a united front regarding U.S. policy in Lebanon.

We do not believe that the issues surrounding proper implementation of the War Powers Resolution are mere "legalisms." At issue are constitutional questions of immense gravity. The War Powers Resolution is law, a law passed over President Nixon's veto by overwhelming majorities in both houses. The reservations expressed by the executive branch about the resolution's constitutionality do not diminish or compromise its legal standing. In the absence of a Supreme Court ruling, only Congress can change or nullify that law. But by failing to demand adherence to obligations prescribed in the Resolution, Congress would abdicate its responsibility to uphold the law. In any event, Congress must not concede to the executive branch the contention that the War Powers Resolution is not binding in all of its particulars.

One approach, first proposed by Minority Leader Byrd and advocated in Committee by Senator Cranston, would have limited any joint resolution to a simple declaration that key provisions of section 4(a) of the War Powers Resolution were triggered by hostilities in Lebanon on August 29, 1983, which resulted in the deaths of 2 Marines. Enactment of such a resolution would not entail a withdrawal of U.S. forces from Lebanon. It would, however, achieve the essential result of affirming unmistakably the applicability of War Powers Resolution procedures, including the requirement for Congressional authorization for the maintenance of U.S. forces in Lebanon beyond 60–90 days. Unfortunately, this proposal was defeated in Committee by a vote of 9–7.

The determined unwillingness of the administration to recognize that the procedures stipulated by the War Powers Resolution are now in fact required became starkly evident during the Secretary

of State's testimony before the Committee. Under questioning on September 21 about the relationship between the Baker-Percy resolution and future U.S. actions in Lebanon, Secretary Shultz was assiduously careful to reserve for the Commander in Chief a full range of options—regarding the scope of operations, the number of U.S. forces, and the duration of the involvement—even in disregard if necessary of the War Powers Resolution framework the Baker-Percy resolution would purportedly impose on the U.S. presence there. Congress cannot ignore what this means. The Administration is prepared to participate in a procedure which would give some appearance of creating a War Powers Resolution framework without really conceding that any such framework exists.

Not only is the War Powers Resolution the law; its applicability to the situation in Lebanon is manifest. Accordingly, we believe strongly that any resolution passed should allow no ambiguity as to whether the procedures set forth in the War Powers Resolution are required. By intentionally side-stepping the issue, the Baker-Percy resolution fails to meet that test.

(2) *The absence of a clearly defined policy.*—The constitutional ambiguity of the Baker-Percy resolution is paralleled by an alarming vagueness concerning the mission of the U.S. forces whose presence in Lebanon the resolution would purport to authorize. One year ago, on August 25, 1982, when U.S. Marines were first introduced into Lebanon, their mission was limited and precise: to provide a temporary buffer that would allow the evacuation from Lebanon of elements of the Palestine Liberation Organization within a specified period of time. Shortly thereafter, when the Marines were reintroduced into Lebanon, they were deployed to perform, as part of a Multinational Force, the less precisely-worded mission set forth in the September 25, 1982, exchange of letters between the United States and Lebanese Governments. That agreement did, however, make clear that the U.S. military role would be confined to "the Beirut area" and would preclude involvement in combat.

While citing the September 25 agreement, the Baker-Percy resolution is drafted so as to be susceptible to an extremely broad—almost infinitely elastic—interpretation of the mission associated with the presence of the U.S. forces in Lebanon. The "purposes" cited in Section 2 include "the removal of all foreign forces from Lebanon" and the restoration of "full control by the Government of Lebanon over its own territory." Thus, over the period of 1 year, the stated mission of U.S. forces in Lebanon has expanded from a limited role, the feasibility of which Congress could evaluate, to a role too nebulous for Congress to evaluate and too far-reaching for U.S. military forces alone possibly to accomplish. Consequently, the effect of the resolution is to provide Congressional acquiescence in a policy involving American soldiers in a commitment the scope of which has yet to be defined even by its proponents.

A major advantage of the Byrd-Cranston proposal to invoke section 4(a)(1) of the War Powers Resolution is that it would require the Administration to submit for Congressional evaluation a clear statement of military mission. This the Baker-Percy resolution would not do. It is not an example of any "Vietnam syndrome" to find in that resolution a disturbing similarity to the "Gulf of Tonkin" resolution of 1964 which, being comparably vague and in-

voking the necessity of protecting American forces, was used by a different Administration to assert that it possessed Congressional support for an Indochina policy which proved to be one of ever-widening involvement.

(3) *An 18-month blank check.*—Since we take as serious the Administration's patent unwillingness to be bound by the stipulations of the War Powers Resolution, the duration of the Baker-Percy "authorization" is technically a moot point. Practically, however, a shorter "authorization" would at least require that Congress face again the issues—constitutional and policy—which Congress faces now but which the Baker-Percy formulation would allow it negligently to defer. Accordingly, we supported—but failed in a 9–8 vote to achieve—the substitution of a 6-month "authorization" period, after which these issues would again necessarily be joined if U.S. forces remain in Lebanon. We reject the argument that a time period shorter than 18 months will endanger the lives of American soldiers by inviting hostile action against them intended to sway U.S. public opinion against a continued U.S. presence. If the Administration had offered a clearly-defined mission in Lebanon for the U.S. Armed Forces and had also acknowledged its legal obligations under the War Powers Resolution, such a limited "authorization" might be unnecessary. But if the Baker-Percy formulation is to be adopted, it should certainly stipulate a duration short enough to require Congress to review soon the crucial questions surrounding the United States involvement in Lebanon. We believe in any case that to pass this resolution would represent a grave abdication of congressional responsibility.

CLAIBORNE PELL.
JOSEPH R. BIDEN, JR.
JOHN GLENN.
PAUL S. SARBANES, JR.
EDWARD ZORINSKY.
PAUL TSONGAS.
ALAN CRANSTON.
CHRISTOPHER J. DODD.

SUPPLEMENTAL VIEWS OF SENATOR BIDEN

I concur with the basic arguments against the Baker-Percy resolution expressed in the Minority Views. I want to emphasize, however, that I would not support any authorization for troops in Lebanon of any duration absent much more clearly defined goals and a reasonable prospect of attaining those goals.

JOSEPH R. BIDEN, Jr.

APPENDIX

THE LEBANON EMERGENCY ASSISTANCE ACT OF 1983

SEC. 4. (a) The President shall obtain statutory authorization from the Congress with respect to any substantial expansion in the number or role in Lebanon of United States Armed Forces, including any introduction of United States Armed Forces into Lebanon in conjunction with agreements providing for the withdrawal of all foreign troops from Lebanon and for the creation of a new multinational peacekeeping force in Lebanon.

(b) Nothing in this section is intended to modify, limit, or suspend any of the standards and procedures prescribed by the War Powers Resolution of 1973.

AGREEMENT BETWEEN THE UNITED STATES AND LEBANON ON UNITED STATES PARTICIPATION IN A MULTINATIONAL FORCE IN BEIRUT. EFFECTED BY EXCHANGE OF NOTES AT BEIRUT SEPTEMBER 25, 1982. ENTERED INTO FORCE SEPTEMBER 25, 1982

Beirut, September 25, 1982.

His Excellency FOUAD BUTRUS,
Deputy Prime Minister and Minister of Foreign Affairs, Beirut.

YOUR EXCELLENCY: I have the honor to refer to Your Excellency's note of 25 September 1982 requesting the deployment of an American Force to the Beirut area. I am pleased to inform you on behalf of my Government that the United States is prepared to deploy temporarily a force of approximately 1200 personnel as part of a Multinational Force (MNF) to establish an environment which will permit the Lebanese Armed Forces (LAF) to carry out their responsibilities in the Beirut area. It is understood that the presence of such an American Force will facilitate the restoration of Lebanese Government sovereignty and authority over the Beirut area, an objective which is fully shared by my Government, and thereby further efforts of the Government of Lebanon to assure the safety of persons in the area and bring to an end the violence which has tragically recurred.

I have the further honor to inform Your Excellency that my Government accepts the terms and conditions concerning the presence of the American Force in the Beirut area as set forth in your note, and that Your Excellency's note and this reply accordingly constitute an agreement between our two Governments.

ROBERT DILLON,
Ambassador of the United States.

REPUBLIQUE LIBANAISE,
MINISTERE DES AFFAIRES ETRANGERES,
Beirut the 25th of September 1982.

His Excellency ROBERT DILLON,
Ambassador of the United States.

YOUR EXCELLENCY: I have the honor to refer to the urgent discussions between representatives of our two governments concerning the recent tragic events which have occurred in the Beirut area, and to consultations between my government and the Secretary General of the United Nations pursuant to United Nations Security Council Resolution 521. On behalf of the Republic of Lebanon, I wish to inform Your Excellency's Government of the determination of the Government of Lebanon to restore its sovereignty and authority over the Beirut area and thereby to assure the safety of persons in the area and bring an end to violence that has recurred. To this end, Israeli forces will withdraw from the Beirut area.

In its consultations with the Secretary General, the Government of Lebanon has noted that the urgency of the situation requires immediate action, and the Government of Lebanon, therefore, is, in conformity with the objectives in U.N. Security Council Resolution 521, proposing to several nations that they contribute forces to serve as a temporary Multinational Force (MNF) in the Beirut area. The mandate of the MNF will be to provide an interposition force at agreed locations and thereby provide the Multinational presence requested by the Lebanese Government to assist it and the Lebanese Armed Forces (LAF) in the Beirut area. This presence will facilitate the restoration of Lebanese Government sovereignty and authority over the Beirut area, and thereby further efforts of my government to assure the safety of persons in the area and bring to an end the violence which has tragically recurred. The MNF may undertake other functions only by mutual agreement.

In the foregoing context, I have the honor to propose that the United States of America deploy a force of approximately 1200 personnel to Beirut, subject to the following terms and conditions:

The American military force shall carry out appropriate activities consistent with the mandate of the MNF.

Command authority over the American Force will be exercised exclusively by the United States Government through existing American military channels.

The LAF and MNF will form a liaison and coordination Committee, composed of representatives of the MNF participating governments and chaired by the representatives of my Government. The Liaison and Coordination Committee will have two essential components: (A) Supervisory liaison; and (B) Military and technical liaison and coordination.

The American Force will operate in close coordination with the LAF. To assure effective coordination with the LAF, the American Force will assign liaison officers to the LAF and the Government of Lebanon will assign liaison officers to the American Force. The LAF liaison officers to the American Force will, inter alia, perform liaison with the civilian population and with the U.N. observers and manifest the authority of the Lebanese Government in all appropriate situations. The

American Force will provide security for LAF personnel operating with the U.S. contingent.

In carrying out its mission, the American Force will not engage in combat. It may, however, exercise the right of self-defense.

It is understood that the presence of the American Force will be needed only for a limited period to meet the urgent requirements posed by the current situation. The MNF contributors and the Government of Lebanon will consult fully concerning the duration of the MNF presence. Arrangements for the departure of the MNF will be the subject of special consultations between the Government of Lebanon and the MNF participating governments. The American Force will depart Lebanon upon any request of the President of Lebanon or upon the decision of the President of the United States.

The Government of Lebanon and the LAF will take all measures necessary to ensure the protection of the American Force's personnel, to include securing assurances from all armed elements not now under the authority of the Lebanese Government that they will refrain from hostilities and not interfere with any activities of the NMF.

The American Force will enjoy both the degree of freedom and movement and the right to undertake those activities deemed necessary for the performance of its mission for the support of its personnel. Accordingly, it shall enjoy the privileges and immunities accorded the administrative and technical staff of the American Embassy in Beirut, and shall be exempt from immigration and customs requirements, and restrictions on entering or departing Lebanon. Personnel, property and equipment of the American Force introduced into Lebanon shall be exempt from any form of tax, duty, charge or levy.

I have the further honor to propose, if the foregoing is acceptable to Your Excellency's Government, that Your Excellency's reply to that effect, together with this Note, shall constitute an agreement between our two governments.

Please accept, Your Excellency, the assurances of my highest consideration.

FOUAD BOUTROS,
Deputy-Prime Minister,
Minister of Foreign Affairs.

[Following are the texts of three resolution considered by the committee on September 23, 1983.]

II

98TH CONGRESS
1ST SESSION

S. J. RES. 159

(as introduced)

To authorize the further participation of United States Armed Forces in the multinational peacekeeping force in Lebanon.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 12, 1983

Mr. MATHIAS introduced the following joint resolution; which was read twice and referred to the Committee on Foreign Relations

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JOINT RESOLUTION

To authorize the further participation of United States Armed Forces in the multinational peacekeeping force in Lebanon.

Whereas the achievement of peace and stability in an independent Lebanon is an important national objective of the United States and a vital step toward a broader peace settlement in the Middle East; and

Whereas United States Armed Forces, in combination with forces from France, Italy, and Great Britain have performed a constructive role in assisting the Government of Lebanon in its efforts to restore the stability and prosperity of that country; and

Whereas under article 1, section 8, of the Constitution of the United States, the Congress has the responsibility to make decisions regarding the commitment and maintenance of

United States Armed Forces abroad, as recognized by the War Powers Resolution of 1973 (Public Law 93–148); and

Whereas the circumstances of the United States Armed Forces in Lebanon, beginning with the fatal attack on United States Marine positions on August 29, and the further exchanges of fire which have resulted in continuing United States casualties, clearly indicate a situation of hostilities or imminent involvement in hostilities by United States forces, as contemplated by section 4(a)(1) of Public Law 93–148; and

Whereas this situation requires congressional authorization to continue the presence of United States Armed Forces in a situation of hostilities or imminent involvement in hostilities for longer than sixty days, as provided in section 5(b) of Public Law 93–148: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. This joint resolution may be cited as the "Lebanon Peacekeeping Resolution".

SEC. 2. For the purposes of this authorization, the sixty-day period specified in section 5(b) of Public Law 93–148 is determined to have begun on August 31, 1983.

SEC. 3. The President is authorized to maintain United States Armed Forces in Lebanon as part of a multinational peacekeeping force for a period of one hundred and twenty days from the expiration of the sixty-day period specified in section 5(b) of Public Law 93–148.

II

98TH CONGRESS
1ST SESSION

S. J. RES. 163

(as introduced)

Finding that section 4(a)(1) of the War Powers Resolution applies to the present circumstances in Lebanon.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 15 (legislative day, SEPTEMBER 12), 1983

Mr. BYRD (for himself, Mr. EAGLETON, Mr. KENNEDY, Mr. SARBANES, Mr. CHILES, Mr. DIXON, and Mr. PELL) introduced the following joint resolution; which was read twice and referred to the Committee on Foreign Relations

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JOINT RESOLUTION

Finding that section 4(a)(1) of the War Powers Resolution applies to the present circumstances in Lebanon.

Whereas United States Armed Forces have been deployed in Lebanon since September 1982, as participants in a Multinational Peacekeeping Force at the request of the Government of Lebanon;

Whereas since August 28, 1983, United States Armed Forces have been introduced into hostilities and into situations where imminent involvement in hostilities is clearly indicated by the circumstances;

Whereas as a result of having been introduced into such hostilities, four United States Marines have been killed and nu-

merous others have been wounded as a result of hostile fire in Lebanon since August 28, 1983;

Whereas such events have required that United States Armed Forces return hostile fire in Lebanon as a matter of necessary and essential self-defense;

Whereas on September 13, 1983, the Department of State announced that United States Marines in Lebanon have been authorized to "use firepower—their own and offshore firepower—in defense of the Marines, the other members of the multinational force and the Lebanese armed forces, if they (are) under attack and if that attack would endanger the Marines or the multinational force"; and

Whereas United States Armed Forces in Lebanon are receiving hostile fire pay as a result of the judgment of the area commander that the circumstances so warrant: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That as of August 28, 1983, United States Armed Forces in Lebanon were introduced "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances," within the meaning of section 4(a)(1) of the War Powers Resolution (Public Law 93–148).

98TH CONGRESS
1ST SESSION

S. J. RES. 166

(as introduced)

Providing statutory authorization under the War Powers Resolution for continued United States participation in the multinational peacekeeping force in Lebanon in order to obtain withdrawal of all foreign forces from Lebanon.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20 (legislative day, SEPTEMBER 19), 1983

Mr. BAKER (for himself and Mr. PERCY) introduced the following joint resolution; which was read twice and referred to the Committee on Foreign Relations

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JOINT RESOLUTION

Providing statutory authorization under the War Powers Resolution for continued United States participation in the multinational peacekeeping force in Lebanon in order to obtain withdrawal of all foreign forces from Lebanon.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This joint resolution may be cited as the "Multinational Force in Lebanon Resolution".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that—

(1) the removal of all foreign forces from Lebanon is an essential United States foreign policy objective in the Middle East.

(2) in order to restore full control by the Government of Lebanon over its own territory, the United States is currently participating in the multinational peacekeeping force (hereafter in this resolution referred to as the "Multinational Force in Lebanon") which was established in accordance with the exchange of letters between the Governments of the United States and Lebanon dated September 25, 1982;

(3) the Multinational Force in Lebanon better enables the Government of Lebanon to establish its unity, independence, and territorial integrity;

(4) progress toward national political reconciliation in Lebanon is necessary; and

(5) United States Armed Forces participating in the Multinational Force in Lebanon are now in hostilities requiring authorization of their continued presence under the War Powers Resolution.

(b) The Congress determines that the requirements of section 4(a)(1) of the War Powers Resolution became operative on August 29, 1983. Consistent with section 5(b) of the War Powers Resolution, the purpose of this joint resolution is

to authorize the continued participation of United States Armed Forces in the Multinational Force in Lebanon.

(c) The Congress intends this joint resolution to constitute the necessary specific statutory authorization under the War Powers Resolution for continued participation by United States Armed Forces in the Multinational Force in Lebanon.

AUTHORIZATION FOR CONTINUED PARTICIPATION OF UNITED STATES ARMED FORCES IN THE MULTINATIONAL FORCE IN LEBANON

SEC. 3. The President is authorized, for purposes of section 5(b) of the War Powers Resolution, to continue participation by United States Armed Forces in the Multinational Force in Lebanon, subject to the provisions of section 6 of this joint resolution. Such participation shall be limited to performance of the functions, and shall be subject to the limitations, specified in the agreement establishing the Multinational Force in Lebanon as set forth in the exchange of letters between the Governments of the United States and Lebanon dated September 25, 1982, except that this shall not preclude such protective measures as may be necessary to ensure the safety of the Multinational Force in Lebanon.

REPORTS TO THE CONGRESS

SEC. 4. As required by section 4(c) of the War Powers Resolution, the President shall report periodically to the Congress with respect to the situation in Lebanon, but in no

event shall he report less often than once every six months. In addition to providing the information required by that section on the status, scope, and duration of hostilities involving United States Armed Forces, such reports shall describe in detail—

(1) the activities being performed by the Multinational Force in Lebanon;

(2) the present composition of the Multinational Force in Lebanon, including a description of the responsibilities and deployment of the armed forces of each participating country;

(3) the results of efforts to reduce and eventually eliminate the Multinational Force in Lebanon;

(4) how continued United States participation in the Multinational Force in Lebanon is advancing United States foreign policy interests in the Middle East; and

(5) what progress has occurred toward national political reconciliation among all Lebanese groups.

STATEMENTS OF POLICY

SEC. 5. (a) The Congress declares that the participation of the armed forces of other countries in the Multinational Force in Lebanon is essential to maintain the international character of the peacekeeping function in Lebanon.

(b) The Congress believes that it should continue to be the policy of the United States to promote continuing discussions with Israel, Syria, and Lebanon with the objective of bringing about the withdrawal of all foreign troops from Lebanon and establishing an environment which will permit the Lebanese Armed Forces to carry out their responsibilities in the Beirut area.

(c) It is the sense of the Congress that, not later than one year after the date of enactment of this joint resolution and at least once a year thereafter, the United States should discuss with the other members of the Security Council of the United Nations the establishment of a United Nations peacekeeping force to assume the responsibilities of the Multinational Force in Lebanon. An analysis of the implications of the response to such discussions for the continuation of the Multinational Force in Lebanon shall be included in the reports required under paragraph (3) of section 4 of this resolution.

DURATION OF AUTHORIZATION FOR UNITED STATES PARTICIPATION IN THE MULTINATIONAL FORCE IN LEBANON

SEC. 6. The participation of United States Armed Forces in the Multinational Force in Lebanon shall be authorized for purposes of the War Powers Resolution until the end of the eighteen-month period beginning on the date of

enactment of this resolution unless the Congress extends such authorization, except that such authorization shall terminate sooner upon the occurrence of any one of the following:

(1) the withdrawal of all foreign forces from Lebanon, unless the President determines and certifies to the Congress that continued United States Armed Forces participation in the Multinational Force in Lebanon is required after such withdrawal in order to accomplish the purposes specified in the September 25, 1982, exchange of letters providing for the establishment of the Multinational Force in Lebanon; or

(2) the assumption by the United Nations or the Government of Lebanon of the responsibilities of the Multinational Force in Lebanon; or

(3) the implementation of other effective security arrangements in the area.

INTERPRETATION OF THIS RESOLUTION

SEC. 7. (a) Nothing in this joint resolution shall preclude the President from withdrawing United States Armed Forces participation in the Multinational Force in Lebanon if circumstances warrant, and nothing in this joint resolution shall preclude the Congress by joint resolution from directing such a withdrawal.

(b) Nothing in this joint resolution modifies, limits, or supersedes any provision of the War Powers Resolution or the requirement of section 4(a) of the Lebanon Emergency Assistance Act of 1983, relating to congressional authorization for any substantial expansion in the number or role of United States Armed Forces in Lebanon.

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